

Wage and Hour Division, Labor

§ 520.300

(d) The Administrator may conduct an investigation, which may include a hearing, prior to taking any action pursuant to this part.

§ 520.205 How do these rules affect other Federal, state and local laws and collective bargaining agreements?

No provision of this part, or of any special minimum wage certificate issued thereunder, shall excuse non-compliance with any other Federal or state law or municipal ordinance or collective bargaining agreement establishing higher standards.

Subpart C—Definitions

§ 520.300 Definitions.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, or his/her authorized representative.

Apparel industry means the manufacturing of the following products as referred to in subpart D of this part:

(1) Rainwear means the manufacture of waterproofed garments and raincoats from oiled cloth or other materials, whether vulcanized, rubberized, cravenetted, or otherwise processed.

(2) Leather and sheep-lined clothing means the manufacture of leather, leather-trimmed and sheeplined garments for men, women or children.

(3) Women's apparel division of the apparel industry for the manufacture of women's, misses', and juniors' dresses means the production of women's, misses' and juniors' dresses; washable service garments; blouses from woven or purchased knit fabric; women's, misses', children's and infants' underwear, nightwear and negligees from woven fabrics; corsets and other body supporting garments from any material; infants' and children's outerwear; and other garments similar to them.

(4) Robes, means the manufacture of robes from any woven material or from purchased knitted materials, including, without limitation, men's, women's and children's bath, lounging and beach robes and dressing gowns.

Apprentice means a worker, at least sixteen years of age unless a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade through a registered apprenticeship program. Training is provided through structured on-the-job training combined with supplemental related theoretical and technical instruction. This term excludes pre-apprentices, trainees, learners, and student-learners. The terms learner and student-learner are defined in this subpart.

Apprenticeship agreement means a written agreement between an apprentice and either his/her employer, or an apprenticeship committee acting as agent for employer(s), which contains the terms and conditions of the employment and training of the apprentice.

Apprenticeship committee means those persons designated by the sponsor to act for it in the administration of the program. A committee may be "joint", i.e., it is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be "unilateral" or "non-joint" and shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

Apprenticeship program means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirements for a written apprenticeship agreement.

BAT means the Bureau of Apprenticeship and Training, Employment and Training Administration, United States Department of Labor.

Bona fide vocational training program means a program authorized and approved by a state board of vocational education or other recognized educational body that provides for part-time employment training which may be scheduled for a part of the work day or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated

with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student-learner's course by an accredited school, college, or university.

Department means the United States Department of Labor.

Experienced worker means a worker whose total experience in an authorized learner occupation in the industry, including vocational training, within the past three years is equal to or greater than 240 hours or such other period as authorized by a learner certificate issued pursuant to the regulations in this part.

Experienced worker available for employment means an experienced worker residing within the area from which the plant/business customarily draws its labor supply or within a reasonable commuting distance of such area, and who is willing and able to accept employment in the plant/business; or an experienced worker residing outside of the area from which the plant/business customarily draws its labor supply, who has in fact made himself or herself available for employment at the plant/business.

FLSA means the Fair Labor Standards Act of 1938 as amended (29 U.S.C. 201 *et seq.*).

Learner means a worker who is being trained for an occupation, which is not customarily recognized as an apprenticeship trade, for which skill, dexterity and judgment must be learned and who, when initially employed produces little or nothing of value. Except in extraordinary circumstances, an employee cannot be considered a "learner" once he/she has acquired a total of 240 hours of job-related and/or vocational training with the same or other employer(s) or training facility(ies) during the past three years. An individual qualifying as a "learner" may only be trained in two qualifying occupations.

Learning period means a period of time measured in work hours and vocational training hours that is normally required to fully train an inexperienced worker in a particular occupation within an industry where the learner is employed. The learning period will not exceed 240 hours for any qualifying oc-

cupation except in extraordinary circumstances where the employer demonstrates that the occupation to be learned requires an extended period of specialized training.

Men's and boys' clothing industry means the industry which manufactures men's, youths', and boys' suits, coats, and overcoats.

Messenger means a worker who is primarily engaged in delivering letters and messages for a firm whose principal business is the delivery of such letters and messages.

Minimum wage means the wage rate required by section 6 of FLSA. For purposes of this part, subminimum wage rates are based exclusively on the applicable minimum wage provided by section 6(a) of FLSA.

Recognized apprenticeship agency means either a state apprenticeship agency recognized by the BAT, or if no such apprenticeship agency exists in the state, the BAT.

Registered apprenticeship program or agreement means a program or agreement which has been approved by a recognized apprenticeship agency as meeting the basic standards of apprenticeship adopted and published by BAT.

Secretary or Secretary of Labor means the Secretary of Labor, United States Department of Labor or his/her authorized representative.

Shoe manufacturing industry means the manufacture or partial manufacture of footwear from any material and by any process except knitting, vulcanizing of the entire article or vulcanizing (as distinct from cementing) of the sole to the upper, including the manufacturing of the following: athletic shoes; boots; boot tops; burial shoes; custom-made boots or shoes; moccasins; puttees, except spiral puttees; sandals; shoes completely rebuilt in a shoe factory; slippers. This term also includes the manufacture from leather or from any shoe-upper material of all cut stock and findings for footwear, including bows, ornaments, and trimmings. It also includes the manufacture of cutsoles; midsoles; insoles; taps; lifts; rands; toplifts; bases; shanks; boxtoes; counters; stays; stripping; sock linings; and heel pads. Shoe

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manufacturing also includes the manufacture of heels from any material except molded rubber, but not including the manufacture of woodheel blocks; the manufacture of cut upper parts for footwear, including linings, vamps and quarters; and the manufacture of pasted shoe stock; as well as the manufacture of boot and shoe patterns. However, the manufacture of cut stock and findings is included within this definition only when performed by companies engaged in the production of shoes who incorporate most of the cut stock and findings in the manufacture of their product(s).

Skilled trade means an apprenticeable occupation which possesses all of the following characteristics:

(1) It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training.

(2) It is clearly identified and commonly recognized throughout an industry.

(3) It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience.

(4) It requires related instruction to supplement the on-the-job training.

(5) It is not merely a part of an apprenticeable occupation and does not fall into any of the following categories: marketing; sales administration; administrative support; executive and managerial; professional and semi-professional occupations (this category covers occupations for which entrance requirements customarily include education of college level).

Standards of apprenticeship means the apprenticeship program is an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, which meets the requirements established by BAT, and is subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

State means any state of the United States or the District of Columbia or any territory or possession of the United States.

Student-learner means a student who is at least sixteen years of age, or at

least eighteen years of age if employed in an occupation which the Secretary has declared to be particularly hazardous, who is receiving instruction in an accredited school, college or university and who is employed by an establishment on a part-time basis, pursuant to a bona fide vocational training program.

Subminimum wage means the rates which may be paid under temporary authorization or under certificate as provided by section 14(a) of FLSA and this part.

Vocational Training Program. See "Bona fide vocational training program".

Wage and Hour Division means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

Subpart D—Messengers, Learners (Excluding Student-Learners), and Apprentices

§ 520.400 Who are messengers, learners, and apprentices?

The terms messenger, learner, and apprentice are defined in subpart C of this part.

§ 520.401 Are there any industries, occupations, etc. that do not qualify for a certificate to employ messengers, learners, or apprentices at subminimum wages?

(a) Certificates to employ messengers at subminimum wages are available to only those establishments engaged in the business of providing messenger service, i.e., the delivery of letters and messages. Requests for such certificates are uniformly denied to applicants whose principal business purpose is not the delivery of messages and letters.

(b) All applications for special certificates authorizing the employment of learners at subminimum wage rates in the manufacture of products in the following industries shall be denied (definitions for all listed activities can be found in subpart C of this part):

(1) In the apparel industry:

(i) Rainwear

(ii) Leather and sheep-lined clothing

(iii) Women's apparel division of the apparel industry for the manufacture